



Decision

Matter of: Al Qabandi United Company, W.L.L.

File: B-415353.8

Date: December 11, 2018

Mathew Thomas, for the protester.

Wade L. Brown, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's decision to make an additional blanket purchase agreement award under a solicitation contemplating multiple awards is dismissed where the protester is an awardee and has not credibly alleged that it is an interested party.

DECISION

Al Qabandi United Company, W.L.L., of Kuwait, protests the award of a blanket purchase agreement (BPA) to TYD Services & Car Rental, of the United Arab Emirates, under request for proposals (RFP) No. W52P1J-17-R-0062, issued by the Department of the Army, U.S. Army Materiel Command, for the establishment of multiple BPAs for the provision of non-tactical vehicle (NTV) leasing and maintenance services in the United States Central Command area of responsibility. Al Qabandi, which also received a BPA award, challenges the Army's decision to make an additional award to TYD.

We dismiss the protest.

BACKGROUND

The RFP, which was issued on September 8, 2017, and subsequently amended 19 times, sought proposals for the award of up to eight fixed-price BPAs for the provision of NTV leasing and maintenance services in Jordan, Kuwait, Qatar, and the United Arab Emirates. RFP, amend. No. 19, at 8. The BPAs will be established for a base year, and include six, 1-year option periods, and the extension period under Federal Acquisition Regulation clause 52.217-8, Option to Extend Services, for up to six months. *Id.* at 9. The RFP explained that the Army would solicit BPA holders when placing new orders, and the specific evaluation standards for the task order competition

would be specified at the task order level. Id. The RFP provided that the award of a BPA would not guarantee a task order award, and there would be no guaranteed minimum orders. Id. Additionally, the RFP included on-ramp procedures for adding additional contractors or creating new pools of vendors in other countries in the Central Command's area of responsibility. Id. at 9-10; see also Al Baz 2000 General Trading & Contracting Co. W.L.L., B-415353.5, Feb. 12, 2018, 2018 CPD ¶ 72.

On October 1, 2018, the Army announced that it had awarded eight BPAs with a total overall program ceiling of \$230 million; Al Qabandi was one of the eight awardees. Protest, exh. No. 2, Award Announcement, at 1. On October 12, TYD filed an agency-level protest challenging the agency's evaluation of its proposal as technically unacceptable. Based on the agency's review of the protest, the Army determined that it had misevaluated TYD's proposal. Additionally, the Army determined that TYD also offered one of the eight lowest-priced proposals, and therefore, but for the agency's erroneous evaluation of TYD's technical acceptability, it would have been one of the eight BPA awardees. Rather than displacing one of the current awardees, the agency elected to make a ninth award to TYD. See Agency Request for Dismissal at 2-3. On November 13, Al Qabandi represents that it became aware of the ninth award during a conversation with the contracting officer, and subsequently filed this protest with our Office.

DISCUSSION

Al Qabandi challenges the Army's decision to make a ninth BPA award to TYD. The protester contends that the additional award is inconsistent with the RFP's eight anticipated BPAs, and will prejudice Al Qabandi because the protester will be "subject to additional Competition that was not anticipated and therefor reduc[e its] possibility for successful Task Order award." Protest at 5, 7. For the reasons that follow, we find that Al Qabandi is not an interested party to pursue a protest challenging the agency's decision to make an additional award.

Under the Competition in Contracting Act of 1984 (CICA), which governs the bid protest jurisdiction of our Office, only an "interested party" may protest a federal procurement. 31 U.S.C. § 3551(1). CICA defines an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract[.]" 31 U.S.C. § 3551(2)(A). Our Bid Protest Regulations employ the same definition. 4 C.F.R. § 21.0(a)(1). Accordingly, to meet the interested party standard under CICA and our Regulations, a protester must (a) be an actual or prospective bidder or offeror, and (b) demonstrate that it possesses a direct economic interest in the contract award. Integral Sys., Inc., B-405303, Aug. 16, 2011, 2011 CPD ¶ 161 at 3.

Here, because Al Qabandi is a BPA awardee, it is not an actual or prospective offeror. As we have noted in our prior decisions, even if a protester has a direct economic interest in the contract award, the protester is not an interested party if it is not an "actual or prospective bidder or offeror." AAR Airlift Grp., Inc., B-414690 et al., Aug. 22,

2017, 2017 CPD ¶ 273 at 5; Aegis Def. Servs., LLC, B-412755, Mar. 25, 2016, 2016 CPD ¶ 98 at 3. By definition, an awardee, such as Al Qabandi, cannot be an actual or prospective offeror with respect to another BPA awarded under the same solicitation. Aegis Def. Servs., LLC, *supra*, at 3-4. This conclusion stems from the simple fact that a contractor that has already been awarded a BPA cannot be awarded additional BPAs, even if it could show flaws in the agency's award of those BPAs. Indeed, if Al Qabandi were to successfully challenge the BPA award to TYD, it would not result in a further BPA award to Al Qabandi.

We also find no merit to Al Qabandi's specific complaints that the addition of a ninth award is improper because it will increase future competition for orders. The RFP provided that the award of a BPA would not guarantee a task order award, and there would be no guaranteed minimum orders. RFP, amend. No. 19, at 2. Al Qabandi has failed to credibly allege that the addition of a ninth BPA would result in its contract work being reduced, increased, or otherwise affected, and therefore we find that the protester is not an interested party to challenge the agency's decision to award another BPA. National Air Cargo Grp., Inc., B-411830.2, Mar. 9, 2016, 2016 CPD ¶ 85 at 4.

Additionally, we do not find that a protest concerning alleged competitive harm in the form of greater competition for government requirements to fall within the scope of our jurisdiction under the Competition in Contracting Act, which requires us to ensure that the statutory requirements for full and open competition are met--not to protect any interest a protester may have in more restrictive specifications. Virginia Elec. & Power Co.; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 7-8. In this regard, our Office generally does not permit a protester to use our Bid Protest function to advocate for more restrictive, rather than more open, competitions for government requirements. See DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 13-14; New Mexico State Univ., B-409566, June 16, 2014, 2014 CPD ¶ 228 at 5; Honeywell Tech. Solutions, Inc., B-407159.4, May 3, 2012, 2013 CPD ¶ 110 at 3.

The protest is dismissed.

Thomas H. Armstrong
General Counsel